

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE: Bair Hugger Forced Air Warming
Products Liability Litigation

MDL No. 15-2666 (JNE/FLN)

This Document Relates to All Actions.

PLAINTIFF(S)

Carolyn Curtis

**FIRST AMENDED MASTER SHORT
FORM COMPLAINT AND JURY
TRIAL DEMAND**

VS.

**3M COMPANY AND ARIZANT
HEALTHCARE, INC.**

1. Plaintiff, Carolyn Curtis, states and brings this civil action in MDL No. 15-2666, entitled *In Re: Bair Hugger Forced Air Warming Products Liability Litigation*. Plaintiff(s) [is/are] filing this Short Form Complaint as permitted by Pretrial Order #8 of this Court.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff, Carolyn Curtis, is a resident and citizen of the State of Missouri and claims damages as set forth below.

3. Plaintiff's Spouse, _____, is a resident and citizen of the State of _____, and claims damages as set forth below. *[Cross out Spousal Claim if not applicable.]*

4. Jurisdiction is proper based upon diversity of Citizenship.

5. Proper Venue: The District Court in which remand trial is proper and where this Complaint would have been filed absent the direct filing order by this Court is Eastern District of Missouri.

6. Plaintiff brings this action *[check the applicable designation]*:

☒ On behalf of [himself/herself];

☐ ~~In a representative capacity as the _____ of the
_____ having been duly appointed as the
_____ by the _____ Court of _____. A
copy of the Letters of Administration for a wrongful death claim is
annexed hereto if such letters are required for the commencement of
such a claim by the Probate, Surrogate or other appropriate court of
the jurisdiction of the decedent.
[Cross out if not applicable.]~~

FACTUAL ALLEGATIONS

7. On or about 11/1/2018, Plaintiff underwent surgery during which the Bair Hugger Forced Air Warming system (hereinafter “Bair Hugger”) was used during the course and scope of her Right Knee Arthroplasty at the Missouri Baptist Medical Center 3015 N Ballas Rd. [medical center and address], in St. Louis, MO by Dr. Solman Corey.

8. Contaminants introduced into Plaintiff’s open surgical wound as a direct and proximate result of use of the Bair Hugger during the subject surgery resulted in Plaintiff developing a periprosthetic joint infection (“PJI”), also known as a deep joint infection (“DJI”). The Pathogen identified was streptococcus *(if known)*.

9. As a result of Plaintiff's infection caused by the Bair Hugger, Plaintiff has undergone Incision and Drainage of the right knee with polyethylene liner exchange [Describe treatment(s) received, e.g., revision arthroplasty, wound vac treatment, multiple staged procedures, etc.] on or about November 18, 2016, at Missouri Baptist Medical Center 3015 N Ballas Rd [medical center(s) and address(es)] by Dr(s). Solman Corey.
[Cross out if not applicable.]

ALLEGATIONS AS TO INJURIES

10. (a) Plaintiff claims damages as a result of (check all that are applicable):

- ☒ INJURY TO HERSELF/HIMSELF
- ☐ INJURY TO THE PERSON REPRESENTED
- ☐ WRONGFUL DEATH
- ☐ SURVIVORSHIP ACTION
- ☐ ECONOMIC LOSS

~~(b) Plaintiff's spouse claims damages as a result of (check all that are applicable):~~ *[Cross out if not applicable.]*

- ~~☐ LOSS OF SERVICES~~
- ~~☐ LOSS OF CONSORTIUM~~

11. Defendants, by their actions or inactions, proximately caused the injuries to Plaintiff(s).

DEFENDANT-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY

12. The following claims and allegations are asserted by Plaintiff(s) and are herein adopted by reference (check all that are applicable):

- ☒ FIRST CAUSE OF ACTION - NEGLIGENCE;
- ☒ SECOND CAUSE OF ACTION - STRICT LIABILITY;
 - ☒ FAILURE TO WARN
 - ☒ DEFECTIVE DESIGN AND MANUFACTURE
- ☒ THIRD CAUSE OF ACTION – BREACH OF EXPRESS WARRANTY;
- ☒ FOURTH CAUSE OF ACTION- BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY LAW OF THE STATE OF Minnesota, Minn. Stat. Trade Regs., Cons. Protection, Ch. 324-341, § 325G.18; Missouri, Miss. Code Ann. § 400.2-314.
- ☒ FIFTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA PREVENTION OF CONSUMER FRAUD ACT;
- ☒ SIXTH CAUSE OF ACTION – VIOLATION OF THE MINNESOTA DECEPTIVE TRADE PRACTICES ACT;
- ☒ SEVENTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA UNLAWFUL TRADE PRACTICES ACT;
- ☒ EIGHTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA FALSE ADVERTISING ACT;
- ☒ NINTH CAUSE OF ACTION- CONSUMER FRAUD AND/OR UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER LAW OF THE STATE OF Minnesota, Minn. Stat. Ann. § 336.2-313 through 315 (2016); § 325F.68 et seq.; Missouri, Miss. Code Ann. § 11-1-63(i)(3) and 75-2-313 (2017); § 75-24-5 et seq.;
- ☒ TENTH CAUSE OF ACTION – NEGLIGENT MISREPRESENTATION;
- ☒ ELEVENTH CAUSE OF ACTION- FRAUDULENT MISREPRESENTATION;
- ☒ TWELFTH CAUSE OF ACTION – FRAUDULENT CONCEALMENT;

☒ THIRTEENTH CAUSE OF ACTION – LOSS OF CONSORTIUM;
and

☒ FOURTEENTH CAUSE OF ACTION – UNJUST ENRICHMENT.

In addition to the above, Plaintiff(s) assert the following additional causes of action under applicable state law:

_____.

[Cross out if not applicable.]

PRAYER FOR RELIEF

WHEREFORE, Plaintiff(s) pray for judgment against Defendants as follows:

1. For compensatory damages;
2. Pre-judgment and post-judgment interest;
3. Statutory damages and relief of the state whose laws will govern this action;
4. Costs and expenses of this litigation;
5. Reasonable attorneys' fees and costs as provided by law;
6. Equitable relief in the nature of disgorgement;
7. Restitution of remedy Defendants' unjust enrichment; and
8. All other relief as the Court deems necessary, just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff(s) hereby demand(s) a trial by jury as to all claims in Complaint so triable.

DATED: November 11, 2021

Respectfully submitted,

BERNSTEIN LIEBHARD LLP

By: /s/ Sandy Liebhard

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